

Revenue Review

Tennessee Department of Revenue

www.Tennessee.gov/revenue

REVENUE ...
Working For You



October 2005

Contents:

New Amnesty Program1

Tribute to Patsy Clark.....1

Frequently Asked Franchise/Excise Tax Questions....2

Successor Liability3

A Note from the Commissioner...4

Upcoming Seminars4

Contact Info4

Did You Know...

You can receive notices and other publications instantly by signing up on the department's ListServ?

Visit our Web site to subscribe to Revenue-News or lists dedicated to county clerks and city officials.

Contact Us:

Tennessee Department of Revenue
Attn: Taxpayer Services
500 Deaderick Street
Nashville, TN 37242
(615) 253-0600
Statewide toll-free:
(800) 342-1003

Sales and Use Tax: Amnesty Program ATTENTION RETAILERS!

Do you make sales into states without collecting that state's sales taxes? Do you make deliveries to those states in your own trucks? Do you send repair or maintenance employees or representatives into various states to perform work on your behalf? Do you sell items through a web site or catalog and then accept returns at a brick-and-mortar store? Do you market jointly with an affiliate that sells through catalog or internet? Do you use in-state solicitors, whether employees, agents or independent contractors, to make sales into a state?

If you answered yes to any of these questions, or if you are ready to take the guesswork out of your "nexus status" and want to sign up for simplified collection processes, you should take advantage of an amnesty program that will be available in all states participating as full members or associate members of the Streamlined Sales and Use Tax Agreement. For the first time ever, Tennessee will be offering this amnesty program after Oct. 1, 2005, in accordance with 2005 Tenn. Pub. Acts 499.

What amnesty is available:

Amnesty is available for sales or use taxes uncollected or unpaid on sales by retailers for any period prior to registration through the Streamlined Sales and Use Tax Central Registration System.

Who are the Streamlined member states:

- Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota, West Virginia (the "Full Member States")
- Arkansas, Ohio, Tennessee, Utah, Wyoming (the "Associate Member States")

Who is eligible:

Sellers who are not currently registered to collect sales taxes in a member state and who volunteer to collect or pay sales or use taxes in the member states by registering through the Streamlined Sales and Use Tax Central Registration System.

Continued on page 2, see Amnesty.

Revenue Bids Best Wishes and Fond Farewell to Beloved Director of Taxpayer Services: Patsy Clark



Patsy Clark plans to say goodbye to the fast lane on Oct. 31, 2005, when she retires from the Department of Revenue after 21 years of dedicated state service. Patsy is known by practitioners, legislators and taxpayers from across the state and across the country for going the extra mile to provide service and cut through bureaucratic processes to "get things

done." Whether it is implementing a new call center that significantly reduced waiting time, working with peers across the state to simplify tax returns, arranging seminars, or revolutionizing our tax registration processes, Patsy is always at the forefront with new ideas and the energy to see things through.

Prior to state service, Patsy worked with the Tennessee Taxpayers Association and then joined Revenue in January 1984 with Commissioner Don Jackson. As Director of Taxpayer Services, she has 114 employees and oversees taxpayer registration, education, taxpayer assistance, the call center, certain electronic commerce initiatives and many other projects within the department.

Dick Goldstine, a CPA with HG&A Associates in Knoxville, says: "Patsy Clark will be sorely missed by every tax practitioner who knows her. Her enthusiasm for working with the practitioner community was preeminent. She was fair, responsive and always represented the Tennessee Department of Revenue in a most positive way. We wish her every happiness in her retirement."

Steve Adams, former State Treasurer and current Chief Administrative Officer for the Tennessee Education Lottery Corporation notes: "Patsy (and her staff) did an unbelievable job in assisting the TEL with the lottery startup. She provided the expertise, the manpower, and the technology to make our taxpayer reviews simple and quick, much easier than I ever dreamed. At that time in my life, as well as several others, Patsy was a godsend."

We wish Patsy the very best in her new life - perhaps she will be able to enjoy a new benefit of retirement: the civilized breakfast.

Amnesty, continued

Who is not eligible:

A seller is not eligible in a member state if:

- The seller is currently registered in the member state to collect sales and use tax, or
- The seller had been registered in the member state within 12 months of the state becoming a member state, or
- The seller has received notice of an audit by the member state and the audit is not yet fully resolved, including any related administrative and judicial processes.

How long does a seller have to sign up and be eligible for amnesty:

For full member states, the amnesty period will end on Sept. 30, 2006, unless a state otherwise provides for amnesty. For associate member states, the period will vary depending on the effective date of their compliance with the Streamlined Sales and Use Tax Agreement.

What is excluded from the amnesty:

- Sales or use taxes owed by the seller in its capacity as a buyer
- Sales or use taxes already paid or remitted to member states in which the seller was registered
- Sales or use taxes collected by the seller that are unpaid to member states
- Liability for taxes other than sales or use taxes
- **INFORMATION OBTAINED THROUGH THE STREAMLINED REGISTRATION SYSTEM MAY NOT BE AND WILL NOT BE USED BY THE MEMBER STATE FOR DETERMINING NEXUS FOR OTHER TAXES.**

How does it work:

The seller visits the Web site of the Streamlined Sales and Use Tax Central Registration System to register to collect taxes for the member states in which the seller makes sales. The seller may link to the Streamlined Web site from www.Tennessee.gov/revenue **AFTER OCT. 1, 2005.**

The information provided by the seller will be sent electronically to all of the full member states and to associate member states for which the seller has chosen to collect the sales or use tax.

How long does a seller have to remain registered to collect sales taxes in a state:

The amnesty provisions in the Agreement require that a seller must maintain its registration and continue to collect and remit applicable sales and use taxes for at least 36 months after the date of registration through the Streamlined Sales and Use Tax Central Registration System in a member state.

Can the amnesty agreement be voided?

If a registration is not maintained for the required 36 months or if a seller is found to have committed fraud or intentional misrepresentation in the application, the amnesty agreement may be voided by the member state.

What if I owe money to Tennessee but I do not qualify for the amnesty under the Streamlined Agreement?

If you have not filed returns or have underreported liability on returns for sales and use or other taxes administered by the department, you may be eligible for a Voluntary Disclosure Agreement. Information on the Voluntary Disclosure Agreement may be found on our Web site (link below) or you may anonymously call our Audit Division Discovery Unit at (615) 741-8319.

www.Tennessee.gov/revenue/misc/voluntarydisclosure.pdf

For more information on this and other programs, visit

www.Tennessee.gov/revenue.

Frequently Asked Franchise/Excise Tax Questions

Q: What is an "obligated member entity" and "obligated member?"

An obligated member entity is a limited liability company, limited partnership, or limited liability partnership, all of whose members or partners are fully liable for the debts, obligations, and liabilities of the entity, as provided in Tenn. Code Ann. Section 67-4-2008(b) - (d), and that has filed appropriate documentation to that effect with the Secretary of State.

An obligated member is defined as a member or partner of an obligated member entity that is fully liable for the debts, obligations, and liabilities of the entity, as provided in Tenn. Code Ann. Section 67-4-2008(b) - (d), and that has filed appropriate documentation to that effect with the Secretary of State.

Q: The members of our limited liability entity are currently registered with the Secretary of State's (SOS) office to be fully liable for the obligations of the entity. Are the members or partners required to file additional documentation with TDR because of the "obligated member" provisions of Public Chapter 499?

No. If all members or partners have already filed appropriate documentation to that effect with the SOS, no additional documentation is required to be filed with TDR to be exempt.

Q: If an obligated member entity or any owner directly or indirectly provides limited liability protection, will they owe franchise and excise taxes? If so, how should this liability be calculated on the portion of the income and equity attributable to such obligated member?

Yes. The obligated member entity owes franchise and excise taxes on the portion of the income and equity attributable to the member entity providing limited liability protection. If such member ownership interest in the obligated member entity is indirect, then the obligated member entity will owe franchise and excise taxes on the portion of income and equity attributable to the first tier.

Frequently Asked Franchise/Excise Tax Questions, cont.

Q: Does the law consider estates in trust and other entities that are exempt from franchise and excise taxes to be providers of limited liability protection?

No.

Q: When must documentation by the obligated member be filed with the Secretary of State?

For tax years beginning before 01/02/00, appropriate documentation must have been filed on or before 09/15/00.

For tax years beginning on or after 07/02/04 but before 08/01/05, appropriate documentation must have been filed on or before 08/01/05.

For tax years beginning on or after 08/01/05, appropriate documentation must be filed on or before the first day of the taxable year for which the return is filed.

Q: Can obligated members be fully liable for the debts, obligations, and liabilities of an obligated member entity?

Yes. Even though one or more entities or individuals dealing with the obligated member entity have by contract agreed to limit their claims against one or more obligated members or against the obligated member entity.

Q: When can we prorate our franchise tax?

2005 Tenn. Pub. Acts 499 amended Tenn. Code Ann. Section 67-4-2115 to allow for franchise tax proration if the tax year is closed within less than 12 months of incorporation, domestication, or commencement of doing business in Tennessee or if the taxpayer changes its accounting period covered by the federal return. No other proration of franchise tax is allowed.

Franchise tax **cannot** be prorated for short period returns resulting in a taxpayer merging out of existence or for short period returns resulting from dissolution.

Q: Can franchise tax be prorated below the \$100 minimum franchise tax?

No. Tenn. Code Ann. Section 67-4-2119 requires a minimum franchise tax of \$100.

Q: Are taxpayers making consolidated net worth election required to file documentation with the Department of Revenue?

An application for computation of net worth on a consolidated basis should be submitted to the department no later than the original due date of the return for the tax year. For example, a return for the calendar year 2005 is due 04/15/06, and election to compute net worth on a consolidated basis for that year should be made no later than that date. The consolidated application also may be filed with the tax return. Once made, the election remains in effect for a five-year minimum. After the initial five years, the consolidated net worth computation election will continue unless discontinued in writing by the affiliated group.

For information on how an "affiliated group" computes its net worth for franchise tax purposes on a consolidated basis after making an election under the provisions of Tenn. Code Ann. Section 67-4-2103(g), please visit the department's Web site.

Are you thinking of buying an existing business? Learn about Successor Liability

The purchaser of a business is liable for any unpaid taxes of the seller for that business pursuant to Tenn. Code Ann. Section 67-6-513. If a dealer who owes sales tax sells out his/her business or stock of goods, the seller must file a final return and make payment within 15 days of quitting the business.

Any purchaser, successor, or assignor is required to withhold a sufficient amount of purchase money to cover any sales taxes due until the seller produces a receipt that the taxes have been paid. If the purchaser fails to withhold these funds, the purchaser can be held personally liable for the taxes, penalties, and interest accruing and unpaid on account of the operation of the business by the former owner.

The amount of successor liability is limited to the amount of purchase money paid by the purchaser to the seller. If the state has a tax lien, purchase money includes cash, notes taken or assumed, cancellation of debts, and the fair market value of any properties exchanged. If a lien has not been filed, purchase money is the cash consideration given for the business.

The purchaser should require the seller to furnish an affidavit that outlines any taxes due. Forward this affidavit to the TDR: If sending certified or regular U.S. mail, send to Tax Enforcement Division, P.O. Box 190665, Nashville, TN 37219-0665. If sending express mail, send to Tennessee Department of Revenue, Attn: Tax Enforcement Division, 500 Deaderick Street, 4th Floor, Nashville, TN 37242. The department has 15 days from the date of receipt to respond to the accuracy of the affidavit to the purchaser. The purchaser is then required to withhold the sufficient monies as prescribed. There is a similar successor statute for business tax on the local level.

Are you a franchise/excise taxpayer making charitable donations to nonprofits?

Charitable donations made to nonprofit organizations are now deductible from net earnings for excise tax purposes. Effective for all tax periods beginning on or after July 1, 2005, 2005 Tenn. Pub. Acts 98 allows taxpayers to deduct 75% of the amount donated to nonprofit organizations exempt from federal tax under 26 U.S.C. §§ 501(c)(3) – (6) from its net earnings for excise tax purposes. This deduction is in addition to the amount allowed in determining federal taxable income. Therefore, if a taxpayer donates \$100 to a nonprofit organization, the taxpayer would be allowed to take a \$100 deduction from its federal taxable income and an additional \$75 (\$100 x 75%) from its net earnings for excise tax purposes. The taxpayer must obtain a certification from the nonprofit organization that the donated funds were spent on goods or services subject to sales and use tax. The nonprofit organization will be responsible for maintaining records to support that it paid sales and use tax on the goods purchased with the donations. Certification forms and access to additional information concerning this deduction can be found on our Web site at www.Tennessee.gov/revenue.

A Note From Commissioner Loren L. Chumley



In the October 2004 issue of *Revenue Review*, I reported on some performance statistics for the fiscal year ended June 30, 2004, for the Department of Revenue in relation to our primary focus areas: Education, Electronic Tax Administration and Quality Control. I continue to be pleased with our performance statistics for the current fiscal year. In the area of education, we hosted or presented 144 educational seminars and reached 7,245 of our customers - this was 34 more seminars than the year before and we reached over 2,200 more participants. We took 314,176 taxpayer calls on our hot line last year - a decrease of 129,010 from the year before. We believe this can be attributed to the self-service features on our Web site and the increased accuracy of electronic commerce. In addition, July 2005 represented a record setting month for returns filed through our Web site. These efficiency improvements allow us greater flexibility to rotate our limited resources to where they are needed the most.

If you owe more than \$5,000 per month in sales and use taxes, you will soon be contacted by our Taxpayer Services Division to start filing and paying your sales and use taxes electronically. This is in accordance with 2005 Tenn. Pub. Acts 131, which became effective on July 1, 2005. You will be able to file either through the Web site, or through a variety of software vendors that have been certified by the Department of Revenue. I cannot say enough about how electronic tax administration improves compliance, efficiency and quality control, and we see our agency continuing to be at the forefront of this arena.

We still have many projects in the pipeline that will enhance service and efficiency. We welcome your suggestions and comments.

Online Sales Tax Filing Statistics

Month	Number of Returns	Total of Amount Collected
May 2005	12,521	\$128,529,377
June 2005	12,912	\$133,615,669
July 2005	13,920	\$151,114,499

New Jackson Office

On Aug. 1, the Department of Revenue's regional office in Jackson moved to a new building, where all Revenue offices will be housed on the third floor. The office's phone number and address, except for the suite number, remain the same. Contact information for Jackson office:

Lowell Thomas State Office Building
225 Dr. Martin Luther King Jr. Drive, Suite 340
Jackson, TN 38301
(731) 423-5747

Income Tax Extension Reminder

The due date for 2004 individual, or Hall, income tax returns with extensions is Oct. 15. Since Oct. 15 is a Saturday this year, returns postmarked Monday, Oct. 17, will be treated as timely filed. No penalty will be due on returns with valid extensions filed by this date. Interest is due on any income tax paid after April 15. The current interest rate is 10%.

Save the Date: Upcoming Seminars and New Business Workshops Across the State

Visit our Web site, www.Tennessee.gov/revenue, and click on "Seminars, New Business Workshops and Speakers" to learn more about these and other upcoming seminars and workshops.

October

Oct. 14 – 2005 Business Tax Update, Tennessee Chamber of Commerce & Industry, Millennium Maxwell House Hotel, Nashville

November

Nov. 9 – New Business Workshop, Chattanooga

Nov. 10 – New Business Workshop, Memphis

Nov. 10 – New Business Workshop, Johnson City

Nov. 15 – New Business Workshop, Nashville

Nov. 16 – New Business Workshop, Knoxville

Nov. 17 – 2005 Business Tax Seminar (Association of Government Accountants), Bartlett Performing Arts and Conference Center, Bartlett

Nov. 29 – 2005 Business Tax Seminar (Association of Government Accountants), Willis Conference Center, Nashville

July Collections

July 2005 collections of the Tennessee Department of Revenue were \$799,004,440, an increase of \$86,685,712 or 12.2% over July 2004 collections. Sales and use tax collections were \$551,690,453, up \$44,327,875 or 8.7% over July 2004 collections. Consumer use tax collections were up 0.6% over July 2004 collections. Franchise and excise tax collections were \$77,388,463, up \$44,831,592 or 137.7% when compared to July 2004 collections. Collections from the inheritance, gift and estate taxes were \$3,179,043, a decrease of \$5,285,368 or 62.4% compared to collections in the same period one year ago.

Are you a registered taxpayer? If YES, we need your tax contact's e-mail address, so we can e-mail information in the future. Call toll-free (800) 342-1003; Nashville-area and out-of-state callers, dial (615) 253-0600.



Authorization number 347193: 150,800 copies: November 2004. This public document was promulgated at a cost of \$0.049 per copy, Tennessee Department of Revenue.